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10/757,578	01/15/2004	Eugene Rider	08160002US	4543

7590 10/05/2009  
McGuire Woods LLP  
Suite 1800  
Tysons Corner  
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EXAMINER
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SHRESTHA, BIJENDRA K

ART UNIT	PAPER NUMBER
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3691

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10/05/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/757,578	<b>Applicant(s)</b> RIDER ET AL.	
	<b>Examiner</b> BIJENDRA K. SHRESTHA	<b>Art Unit</b> 3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-41 and 43-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-41 and 43-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Claims 1-42 are presented for examination. Applicant filed amendment on 05/26/2009 amending claims 17, 31 and 35-37, and adding new claims 43-45.

Examiner withdraws 35 U.S.C 101 rejection of claims 17-34 after considering applicant's amendments to claims 17 and 31. After careful consideration of applicant's arguments and amendments, new grounds of rejections of claims necessitated by Applicant's amendment are established in the instant application as set forth in detail below.

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

Claim 35 is objected to because of the following informalities: amended claim is recited as an "Original" instead of "Currently amended". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 35-41 and 43-45 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In particular, claim 35 recites in the preamble “a system for assessing product attractiveness.....”, the body of the claim does not contain any limitations indicating the structure of the system. A system or an apparatus claim should always claim the structure or the hardware that performs the function. Applicant’s claimed limitations consist of a first component...; a second component...; and a third component.... The written description specifies these component as a selectable tabs in graphical user interface (Fig.1 and 2) (software according to the specification) that do not describe the structure of the device. Appropriate correction is required.

3. Claim 40 is further rejected for not meeting structural requirement under means plus function issue of USC 112 sixth paragraph.. Claim 40 recites “a system ....comprising: a means for providing....; a means for prompting...; and means for generating, “without disclosing any structure in the specification to perform those functions. Simply reciting selectable tabs in a graphical user interface (see Figs. 1 and 2) without providing some details about the means to accomplish the function is not enough.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 17-19, 22-31, 33-41 and 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable by JD Power and Associate Report (called "JD" hereinafter) (reference U in attached PTO-892) in view of Fleming, U.S. Patent No. 6,449,766 (reference A in attached PTO-892) further in view of Abelow, U.S. Patent No. 5,999,908 (reference B in attached PTO-892).

6. As per claim 17, 29, 31, 33 and 43-45, JD teaches a method for assessing product risk comprising the steps of:

providing predetermined attractiveness scores associated with one or more product attributes (see page 2, paragraph 1; where product attributes are grouped into quality and reliability (30%), vehicle appeal (25%), service satisfaction (23%) and ownership costs (22%));

prompting for feedback relating to each of the one or more product attributes ; and (see page 2; paragraph 3; where customer satisfaction is supported by customer brand rating in the feedback such that higher brand rating results higher repurchase of the brand in future); and

computing at least one product score for the one or more product attributes based on the predetermined attribute scores and the feedback (see page1, paragraph 1 and 2; where product scores based on attributes are Toyota: 841/1000, Mazda: 810/1000, BMW: 809/1000 etc. and ranked the car model accordingly).

JD further teaches outputting the at least one product score to be used at least in part to change a design criteria of the product (see page 1, paragraph 6; where JD Power Associates Report is designed for manufactures to track and **improve** customer

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satisfaction with quality of their vehicle and services; Examiner notes improving quality of a product involve changing design criteria of the product).

JD does not teach computer implemented customer feedback provided is used for introduction of the new product.

Abelow teaches computer implemented customer feedback provided is used for introduction of the new product (see Fig. 20, paragraph [0493-0494]).

Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to include computer implemented customer feedback provided is used for introduction of the new product of JD because Abelow teaches including above features would provide new roles to customer and new user in the design and development of products and services and customer-vendor relationships (Abelow, paragraph [0007]).

JD does not teach rating associated one more age brackets.

Fleming teaches rating associated with one more age brackets (Fleming, column 1, lines 25-55).

Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to include rating associated one more age brackets of JD because Fleming teaches including above features would enable parent to determine appropriateness of television program to their children (Fleming, column 1, lines 38-40).

7. As per claim 18, JD teaches claim 17 as described above. JD further teaches the method wherein the method comprising the steps of:

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prompting for mitigation feedback (see page 2, paragraph 3; where customer give feedback on brand repurchase in future); and

generating at least one mitigation score based on the mitigation feedback, wherein the mitigation score provides a mitigation to the product score (see page 2, paragraph 3; where customer provide brand ratings of 700-800 and 800 points or more on brand repurchase based on customer satisfaction with the product).

8. As per claim 19, JD teaches claim 18 as described above. JD further teaches the method wherein

the mitigation feedback relates to at least one of a caregiver perception, a user perception, a value, and a labeling effectiveness (see page 2, paragraph 3; where feedback related to customer satisfaction regarding perception of brand recognition).

9. As per claim 23 and 34, JD teaches claims 17 and 31 as described above. JD further teaches the method comprising the steps of:

the one or more product attributes include at least one of a sensory attribute, a physical attribute, and a cognitive attribute (see page 2, paragraph 1; where product attributes are grouped into quality and reliability (30%), vehicle appeal (25%), service satisfaction (23%)).

10. As per claims 22, 24-29 and 30, the Examiner notes, information identifying type (product attributes features), characteristics, condition, etc. is construed as nonfunctional descriptive material, and is not functionally related to the substrate of the method. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *Cf. In re Gulack*, 703 F.2d 1381, 1385, 217

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*USPQ 401 , 404 (Fed. Cir. 1983), In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).*

11. As per claim 35, 40 and 41, JD teaches a system for assessing product attractiveness and risk, comprising:

a first component embodied in a storage medium to provide predetermined attractiveness scores associated with one or more product attributes and one or more age brackets (see page 2, paragraph 1; where product attributes are grouped into quality and reliability (30%), vehicle appeal (25%), service satisfaction (23%) and ownership costs (22%));;

a second component embodied in a storage medium to prompt for feedback relating to each the one or more product attributes (see page 2; paragraph 3; where customer satisfaction is supported by customer brand rating in the feedback such that higher brand rating results higher repurchase of the brand in future); and

a third component embodied in a storage medium to compute a product attractiveness score for the one or more product attributes based on the predetermined attribute scores and the feedback (see page1, paragraph 1 and 2; where product scores based on attributes are Toyota: 841/1000, Mazda: 810/1000, BMW: 809/1000 etc. and ranked the car model accordingly).

JD does not teach rating associated one more age brackets.

12. Fleming teaches rating associated with one more age brackets (Fleming, column 1, lines 25-55).



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Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to include rating associated one more age brackets of JD because Fleming teaches including above features would enable parent to determine appropriateness of television program to their children (Fleming, column 1, lines 38-40).

13. As per claim 36, JD teaches claim 35 as described above. Claim 36 is rejected under same rational claim 18 as described above.

14. As per claim 37, JD teaches claim 35 as described above. Claim 36 is rejected under same rational claim 20 as described above.

15. As per claim 38-39 and 41, JD teaches claim 35 as described above.

Claims 38-39 and 41 are rejected under rational that information identifying type (product attributes features), characteristics, condition, etc. is construed as nonfunctional descriptive material, and is not functionally related to the substrate of the method. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *Cf. In re Gulack*, 703 F.2d 1381 , 1385, 217 USPQ 401 , 404 (Fed. Cir. 1983), *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

16. Claims 20-21 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable by JD Power and Associate Report (called "JD" hereinafter)(reference U in attached PTO-892) in view of Fleming, U.S. Patent No. 6,449,766 (reference A in attached PTO-892) further in view of Goddard, U.S. Pub No. 2005/0086530 (reference D in attached PTO-892).

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17. As per claim 20, JD teaches claim 18 as described above. JD further teaches the method comprising the steps of:

generating a composite mitigation score associated with one or more age brackets and based on the at least one mitigation score (see claim 18);

generating a composite attractiveness score based on the one or more age brackets and based on the at least one attractiveness score (see claim 17); and

JD does not teach generating a composite product score based on the composite attractiveness score and the composite mitigation score, wherein the composite mitigation score offsets the composite attractiveness score.

Goddard teaches generating a composite product score based on the composite attractiveness score and the composite mitigation score, wherein the composite mitigation score offsets the composite attractiveness score (Goddard, Fig. 5).

Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to include generating a composite product score based on the composite attractiveness score and the composite mitigation score, wherein the composite mitigation score offsets the composite attractiveness score of JD because Goddard teaches including above features would enable to form combined score to represent risk posed by the application (paragraph [0012]).

18. As per claim 21 and 32, JD teaches the method comprising the steps of: the composite product score is indicative of risk level for a certain age group using a certain product (Examiner notes age based TV rating is based on risk of exposing unwanted TV contents to different age groups).

### ***Response to Arguments***

19. New grounds of rejections of claims necessitated by Applicant's amendment are established in the instant application. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

The claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Additionally, it is noted that KSR forecloses the argument that a **specific** teaching, suggestion, or motivation is required to support a finding of obviousness. Under KSR, a claim would have been obvious if the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art at

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the time of the invention (Rationale A). Furthermore, under KSR, a claim would have been obvious if a particular known technique was recognized as part of the ordinary capabilities of one skilled in the art. One of ordinary skill in the art would have been capable of applying the teachings of Boyd and Ovadia into the disclosure of Pentel and the results would have been predictable to one of ordinary skill in the art (Rationale D).

Examiner agrees with applicant argument that consumers are already owners of the vehicle but disagrees with applicant argument that the attractiveness scores cannot be provided prior to market introduction of the product. JD Power teaches that JD Power Associates Report is designed for manufactures to track and **improve** customer satisfaction with quality of their vehicle and services (JD, page 1, paragraph 6).

Examiner further introduced a new reference Abelow which teaches introduction of new product and brand names using feedback of customers using existing product (Abelow, Fig. 20, paragraph [0493-494]).

### ***Conclusion***

20. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosures. Applicant is required under 37 CFR 1.111(c) to consider references fully when responding to this action.

The following are pertinent to current invention, though not relied upon:

Baxter et al. (U.S. Pub No. 2004/0199417) teach assessing information technology product.

Cogliandro (U.S. Pub No. 2004/0015375) teaches system and method for reducing risk.

Connelly (U.S. Pub No. 2002/0143607) teaches system and method for transparently obtaining customer preferences to refine product features or marketing focus.

Jasper et al. (U.S. Pub No. 2004/0049478) teach attribute scoring for unstructured content.

Johnston et al. (U.S. Patent No. 6,826,541) teach facilitating user choice among complex alternatives using conjoint analysis.

Lambert (U.S. Patent No. 6,529,892) teaches apparatus, method and product for multi-attribute drug comparison.

Miller et al. (U.S. Patent No. 7,567,917) teach product design methodology.

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Nelson (U.S. Pub No. 2003/0033093) teaches method for designing product and processes.

Shaya et al. (U.S. Pub No. 2002/0161664) teach intelligent performance-based product recommendation system.

Urbish et al. (U.S. Patent No. 5,761,093) teach quality forecasting engine.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bijendra K. Shrestha whose telephone number is (571) 270-1374. The examiner can normally be reached on 7:00AM-4:30PM (Monday-Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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